IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K. M. JOSEPH

MONDAY, THE 17TH JULY 2006 / 26TH ASHADHA,1928

ST.Rev..No. 177 of 2006()

TA.351/2005 of S.T.A.T.ADDL.BENCH,TVM.
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REVISION PETITIONER: APPELLANT:

M/S. ELECTROLUX KELVINATORS LTD.,
CHEMMANI LANE, KALOOR, ERNAKULAM.

BY ADV. SMT.K.LATHA

RESPONDENTS:

THE STATE OF KERALA.

BY SPL. G.P. SRI. V.V. ASOKAN

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 17/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

S.T.Rev. NO. 177 OF 2006

Dated this the 17th day of July, 2006

JUDGMENT

Ramachandran Nair,J.

Heard counsel for the petitioner and Special Government Pleader. The order under challenge is penalty levied under Section 29A(4) of the KGST Act for transport of one truck load of 93 numbers of compressors, 35 numbers of freezers and 60 numbers of drier. Even though petitioner contended that materials are defective and damaged articles returneds by dealers for replacement, this explanation was rejected and penalty of Rs. 16560/- was levied. It seems petitioner tried to cover the transaction under cover of another delivery note which appears to have been used for transport of onward consignment of new compressors and components for replacement in the place of the defective ones. Counsel for the petitioner submitted that delivery note was produced to establish the nature of transaction as one of replacement. On going through the orders, we find that the Department has accepted that the items transported are defective ones, that is why

obviously a low amount of penalty was levied. The company is admittedly not dealing in defective compressors and components which have only scrap value. Moreover the transaction pursuant to which goods were transported is on the face of it return of defective components by the dealer to the manufacturing company. In the circumstances, and since transport is honoured by the petitioner, TRC is allowed vacating the penalty order. However, the assessing officer is free ti verify whether the items transported are accounted as replacement for defective materials in the course of assessment.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge